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**Date:** 14/06/2019

**DH-DD(2019)673**

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Meeting: 1355<sup>th</sup> meeting (September 2019) (DH)

Reply from the authorities (12/06/2019) following a communication from a NGO in the case D.H. AND OTHERS v. the Czech Republic (Application No. 57325/00)

Information made available under Rule 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1355<sup>e</sup> réunion (septembre 2019) (DH)

Réponse des autorités (12/06/2019) suite à une communication d'une ONG relative à l'affaire D.H. ET AUTRES c. the République tchèque (requête n° 57325/00) (**anglais uniquement**).

Informations mises à disposition en vertu de la Règle 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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DGI

12 JUIN 2019

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

**ROBERT PLAGA**

Minister of Education, Youth and Sport

Prague, 11 June 2019

Ref. No.: MSMT-18056/2019-1

***[Translation of the letter  
of the Czech Minister of Education, Youth and Sport  
to the Czech Minister of Justice  
concerning the communication that the Committee of Ministers received  
in the case of D.H. and others v. the Czech Republic  
from the Czech Public Defender of Rights on 23 May 2019]***

**Dear Minister,**

On behalf of the Ministry of Education, Youth and Sport (hereinafter “the MEYS”), please find comments on the Opinion of the Public Defender of Rights on the Communication from the Czech authorities concerning the enforcement of the judgment of the European Court of Human Rights in the Case of *D.H. and Others v. the Czech Republic*. I am also clarifying certain aspects that the Public Defender of Rights believes may affect the implementation of the judgment.

The MEYS’s priority is to continue promoting inclusive education, including high-quality education for Roma pupils. The MEYS is successful in obtaining sufficient funds for applying a systematic inclusive approach. In addition to funding support measures, it also runs subsidy and development programmes specifically focused on support for Roma children and pupils, *Promoting the Integration of the Roma Minority and Support for Socially Disadvantaged Roma Pupils of Secondary Schools, Conservatories and Students of Technical Colleges*, under which financial support can be obtained for subsistence, accommodation and travel costs, payments for education and school requisites, etc.

**A. Estimated number of Roma pupils in primary schools**

Every year, the MEYS monitors Roma pupils’ situation in education and makes qualified estimates and publicly shares this data. Among European countries, this is a unique monitoring scheme that helps to implement further educational policies. According to the Report on the

collection of qualified estimates of Roma pupil numbers in primary schools in the 2018/2019 school year, which took place, as in the two preceding school years, at all primary schools entered in the register of schools and school facilities (4,169 primary schools in total), Roma pupils account for 29.1% of all the pupils being educated under the programmes for pupils with mild mental disabilities, which is down by 0.4 percentage points on the preceding year.

Every year, the MEYS publishes a *Statistical Yearbook of the Education System – Performance Indicators*, which also provides information about the numbers of children, pupils and students with mild mental disabilities at schools of all types and kinds.

With a view to rendering the diagnostics of pupils with special educational needs more accurate, the MEYS repeatedly opens the *Equipping SCF with Diagnostic Tools* development programme, for which CZK 10 million has been allocated in 2019. Through the programme, the MEYS provides school counselling facilities with funds to procure diagnostic tools for the diagnostics of children, pupils and students, which are usable for determining adequate support measures, for specifying pupils' educational needs, and for designing the best support in education. The purpose of saturating school counselling facilities through this development programme on a nationwide scale is to facilitate the best possible and the most accurate diagnostics of children's, pupils' and students' special educational needs.

From 1 September 2020, there will no longer be any education under the Annex to the Framework Educational Programme for Primary Education governing the education of pupils with mild mental disabilities (hereinafter 'FEP PE MMD'). As regards the increase in the number of Roma pupils being educated under the adjusted outputs of the Framework Educational Programme for Primary Education (hereinafter 'FEP PE AO'), I have to note that this involves a support measure providing differentiated educational support precisely according to the individually differentiated needs and evaluation of learning outcomes for all pupils with special educational needs regardless of their ethnic or social background. While the repealed FEP PE MMD set out the same lowered level in all educational areas for all pupils mild mental disabilities without differentiating between the needs of the individual pupils, FEP PE AO allows pupils mild mental disabilities to use the adjusted outcomes only in those areas where this is necessary for the pupil based on recommendations from the school counselling facility. Education under FEP PE AO has the same level of quality. It helps to individualise education by the pupil's needs so that everybody has a chance to excel and experience success. The individualised approach and, more broadly, the use of formative assessment are conducive to this.

## **B. Amendment to the regulation on the education of pupils with special educational needs**

As regards the amendment of Regulation no. 27/2016 on the education of pupils with special educational needs and of gifted pupils, as amended, I would like to note that all the proposed changes have been prepared based on the MEYS's broad-ranging and detailed debate with representatives of the expert circles and the non-profit sector so that the draft [amended] Regulation would maximally reflect the suggestions raised and the specificities of the various types of schools and pupils' special educational needs.

Under Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter 'the Convention'), taken together with Article 2 of Protocol No. 1, and also Article 46 of the Convention in relation to the judgment in *D.H. and Others v. the Czech*

*Republic*, the Czech Republic has adopted measures intended to make sure that Roma children are not educated under different curricula in unjustified cases and at the same time are not educated separately from the majority population.

The above has been reflected in the Revised Action Plan for the Enforcement of the Judgment of the European Court of Human Rights in the Case of D.H. and Others v. the Czech Republic dated 5 February 2016 (hereinafter 'the Action Plan'), which the Czech Republic has submitted to the Committee of Ministers of the Council of Europe and in which it has set out primarily the following measures:

- Abandon the categorisation of pupils as those with a health disability/disadvantage and social disadvantage and introduce a category of pupils with special educational needs as those who need support measures for exercising their right to education on an equal footing with others;
- Lay down the right of pupils with special educational needs to the provision of the required support measures, paid for by the State, in mainstream primary schools;
- Prohibition to educate pupils without mental disabilities in classes and schools for pupils with mental disabilities;
- Abandon the diagnostic placements in classes for pupils with mild mental disabilities;
- Limit the validity of the recommendation to educate a pupil in a school or class for pupils mild mental disabilities to no more than one year, during which the recommendation will be assessed as to whether or not it continues to be warranted;
- Limit the validity of the follow-up recommendation to enrol a pupil in a school or class for pupils mild mental disabilities to no more than two years, during which the recommendation will be assessed as to whether or not it continues to be warranted;
- Gradually standardise and introduce into practice new diagnostic tools;
- Introduce the option of revisions of diagnoses;
- Enhance the Czech School Inspectorate's inspection powers to include also counselling services besides checking any incorrect enrolment of pupils;
- Annual examination of the operation of school counselling facilities and evaluation thereof;
- Annual collection of data on the education of Roma pupils and evaluation thereof;
- Introduce a mandatory last year of preschool education;
- Repeal FEP PE MMD.

The amendment to the Regulation, which the Public Defender of Rights mentions, does not concern any of the above measures and guarantees for ensuring Roma children's access to primary education on an equal footing with others. It should therefore be noted with respect to the proposed amendment that the rule that pupils without mental disabilities shall not be educated in schools or classes set up for pupils with mental disabilities will continue to be in place. This, together with the other measures that are already being implemented under the

Action Plan, very clearly continues to provide sufficient guarantees that pupils without mental disabilities shall not be educated under a curriculum that is 'inferior' in terms of content.

The following can be noted on the other areas for which the amendment to the Regulation provides:

It is appropriate to modify the consistent establishment of schools for only one type of disadvantage, because the need exists to tackle situations where the accessibility of an adequate method of education is impaired for a particular pupil due to the local conditions. Given that in geographic terms, special schools are not easily accessible, and therefore the enrolment of a pupil in a school may result in the necessity of their living in a boarding school, which can only rarely be in accordance with the best interest of pupils (in particular those of a younger school age), who should be provided with good and free primary and secondary education as close as possible to the place of their residence. It is appropriate to recall that the Regulation makes inclusive education of pupils with various disadvantages possible already today, albeit to a limited extent.

The omission of the provision laying down preferential education in mainstream schools was only a formal amendment to the text of the Regulation, because this rule stems from the very wording of Act no. 561/2004 on pre-school, primary, secondary, tertiary professional and other education (the Schools Act), as amended, which prevails over the text of the Regulation at all times. This rule therefore continues to be part of the legal system at the level of a law.

The purpose of modifying the organisation of education in classes by reducing the number of pedagogical staff is to make instruction more effective. The excessively large number of pedagogical staff per classroom has been evaluated as complicating the education of pupils, and the number of pedagogical staff has been determined taking into account the practical experience in the various schools/classes. It should be added in this respect that where children are accepted to schools preferentially based on the place of residence, the amendment to the Regulation envisages an increased number of pedagogical staff so that a pedagogical worker can be hired for such schools in case of need.

### **C. Ethnic segregation in education**

The success of desegregation depends on inter-departmental and multi-disciplinary cooperation between the MEYS, the Ministry of Labour and Social Affairs and other state administration authorities, the Regions, schools and school facilities, etc. The MEYS is aware of the need for cooperation with the families of the children and pupils, the need to motivate children and their legal guardians to education, etc. All of the relevant players inside and outside the education sector (primary schools, kindergartens, non-profit organisations, social service facilities, etc.) must be involved for the desegregation to be successful. The regular review of the meeting of the set objectives, the related social services and the activities at the local level also play a role in this respect.

Segregation in education should be prevented right up front, i.e. at the stage of preschool education. The MEYS has been systematically following this direction since 2016 through, in particular, legislating on the mandatory preschool education in the last school year preceding the start of mandatory school attendance. Thanks to the MEYS's work with a highly diversified target group, the percentage of children enrolled in preschool education is gradually rising. Thanks to the MEYS's systematic work, at the inter-departmental level a common

position has been reached with the Ministry of Labour and Social Affairs on the course of action to be followed by the authorities of departments for the social and legal protection of children in cases where the legal guardians fail to perform their obligation to sign up their child for enrolment in mandatory preschool education. The MEYS regards widely accessible preschool education as a key measure conducive to the reinforcement of the elements of inclusive education.

#### **D. Growth in the number of pupils with developmental learning and behavioural disorders**

The rising number of pupils with specific developmental learning and behavioural disorders is attributable to *inter alia* the diagnostic procedures, which are becoming increasingly accurate. The MEYS regards timely diagnostics and special pedagogy interventions in cases of specific learning and behavioural disorders as an absolutely fundamental contribution from the entire system of support.

The National Institute for Education has subjected the diagnostics of mild mental disabilities to continuous analysis, which was one of the input documents in the process of selecting the recommended diagnostic tools to be supported under the *Equipping School Counselling Facilities with Diagnostic Tools* development programme.

In order to clarify the above some more, it should also be noted that the number of pupils with developmental learning and behavioural disorders may also be rising due to the categorisation of support by the pupils' degree of difficulties, because pupils with a lower degree of this disadvantage are also entitled to receive supporting measures now.

In the 2018/2019 school year, almost 75% of pupils specified in Article 16 (9) of the Schools Act are already being educated in the educational mainstream outside special classes (see the table below).

	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Number of pupils	789,486	794,642	807,950	827,654	854,137	880,251	906,188	926,108	940,928
Disadvantaged pupils under Article 16(9) ('Z16/9')	70,723	71,791	72,110	73,629	75,848	78,717	81,644	95,631	101,983
– individually integrated	36,226	39,160	40,888	43,352	45,853	49,225	53,206	68,419	76,037
– in special classes	34,497	32,631	31,222	30,277	29,995	29,492	28,438	27,212	25,946
Z16/9 percentage of the total number of primary school pupils	8.96%	9.03%	8.93%	8.90%	8.88%	8.94%	9.01%	10.33%	10.84%
Percentage of individually integrated pupils of the total number of Z16/9	51.2%	54.5%	56.7%	58.9%	60.5%	62.5%	65.2%	71.5%	74.6%
Percentage of pupils in special classes of the total number of Z16/9	48.8%	45.5%	43.3%	41.1%	39.5%	37.5%	34.8%	28.5%	25.4%

In conclusion of my statement I would like to assure you that the MEYS is monitoring the education of Roma pupils in detail and that additional measures are being planned in the Czech Republic's educational policy to reinforce the elements of inclusive education. These have been reflected in the draft *Long-term Plan of Education and Development of the Educational Policy in the Czech Republic for 2019–2023*. The top priority objectives of this

document include, among other things, achieving a higher efficiency of school counselling facilities through implementing standardised procedures in the provision of counselling services, in particular when identifying special educational needs and unusually gifted children and when recommending support measures. An equally important objective is promoting equality in access to education at all tiers of the educational system, which will enable every child, pupil and student to fully develop their capabilities in the company of their peers. At the same time, the issue of inclusion is one of the priority axes of the *Czech Republic's Educational Policy Strategy until 2030*.

Therefore, in no case is the MEYS jeopardising the implementation of the ECHR's judgment in the case of *D.H. and Others v. the Czech Republic*.

Yours sincerely,

Signed Robert Plaga

**To:**  
**Ms Marie Benešová**  
**Minister of Justice**  
**[...]**